

REMARKS

In the Office Action dated February 24, 2005 claims 20-26, 28-31, and 34 were rejected under 35 U.S.C. §102(b) as being anticipated by Wilk US 5,330,486. Claim 27 was rejected under 35 U.S.C. §103(a) as being obvious over Wilk US 5,330,486 in view of Wilk US 5,314,436.

Applicant has amended claim 20 above to recite additional aspects of Applicant's invention. Claims 21, 22, 26, 27 and 34 were previously presented. Claims 23-25, 28-31 are original claims. Claims 42-43 have been added. Thus, claims 20-31, 34, and 42-43 are currently pending in the application.

The February 24, 2005 Office Action and the references cited therein have been carefully considered. In view of the amendments presented herewith, and based on the following remarks, Applicant submits that the instant application is in condition for allowance.

Claim Rejections - 35 U.S.C. §102

Claims 20-26, 28-31 and 34

Claims 20-26, and 28-31 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,330,486 ("Wilk '486"). Claim 20 is the only independent claim still pending. Claim 20 expressly recites the feature of a "hollow shaft having a distal end without any surgical instrument attached." In effort to further clarify this feature, claim 20 was amended to further recite the feature of inserting "the distal free end of" the hollow shaft "without any surgical instrument attached" in the body via a first orifice. In the next step, a surgical instrument is inserted into the body via a second orifice and is coupled to the distal free end which up to that point has no surgical instrument attached. This claim is completely different from the embodiment of Wilk '486 shown in Fig. 10 as applied by the Examiner. Indeed, in

Wilk '486, a stapling device 214 is attached to shaft 216 when the stapling device 214 and the shaft are inserted into the body. This is completely contrary to Applicant's claimed invention that specifies that no surgical instrument is attached to the shaft. Furthermore, the anvil 222 that is inserted through another orifice is coupled to the stapling device 214 and not to a free end of shaft 216 having no instrument previously attached. Accordingly, Wilk '486 teaches completely away from Applicant's claimed invention. Applicant respectfully submits that the above-quoted features are not disclosed or taught by Wilk '486. Accordingly, Applicant respectfully requests that the rejection of independent claim 20, as well as dependent claims 21-26, 28-31, be withdrawn.

Claim 34

Dependent Claim 34 stands rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,330,486 ("Wilk '486"). Wilk '486 does not disclose all of the features of claim 34 for the reasons previously presented in connection with Independent claim 20. Furthermore, Wilk does not disclose "a quick connecting fitting 218 having a fitting diameter substantially equal to the hollow shaft diameter." On page 3 of the office action the Examiner states that "Wilk teaches a quick connecting fitting 218 having a fitting diameter substantially equal to the hollow shaft diameter." Significantly, however, element 218 is NOT a quick connect fitting. Instead, element 218 is a stapling member and element 216 is a shaft. See Column 18, lines 55-57 of Wilk '486. Even if element 218 is misconstrued to be a coupling element, there is no disclosure in Wilk '486 that recites that elements 218 and 216 have the same or similar diameter. Figure 10 shows element 218 and element 216. Clearly, the illustration in figure 10 shows element 218 to be of a substantially greater diameter than element 216. Applicant therefore requests that claim 34 be allowed because at the minimum element 218 does not have a diameter substantially equal to element 216. Applicant also

submits that claim 34 is allowable because element 218 is a stapling member not a coupler.

Claim Rejections - 35 U.S.C. §103

Claim 27

Dependent claim 27 stands rejected under 35 U.S.C. §103(a) as being obvious over Wilk '486 and in further view of Wilk US 5,314,436. Claim 27 depends from independent claim 20. Applicant respectfully submits that Wilk '436 fails to teach or suggest those features recited in claim 20 that are absent from Wilk '486, as previously described in connection with claim 20. Hence, claim 27 is patentable for at least the same reasons as claim 20 from which claim 27 depends. Furthermore, claim 27 relates to the feature in which the surgical instrument has been inserted through the second orifice and has been coupled to the free end of the shaft that was inserted through the first orifice without any instrument being attached thereto, as recited in base claim 20, and then as recited in claim 27 the surgical instrument is withdrawn together with the shaft through the first orifice. This feature is not taught by the combination of the Wilk patents as applied by the Examiner. Thus, Applicant respectfully requests that the Examiner withdraw the rejection of claim 27.

New Claims

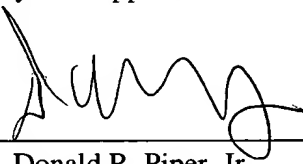
Claims 42-43 have been added. Claims 42-43 are patentable for at least the same reasons as independent claim 20. In addition, the feature of using a motor to drive the shaft as set forth in claim 42 and the feature of using a computer to control operation of the motor are patentable features in the manner set forth in Applicant's claims 42 and 43, respectively.

In light of the foregoing amendments, the Applicant believes that the application is in a condition for allowance. The Examiner is encouraged to contact the Applicant's undersigned attorney if the Examiner believes that issues remain regarding the allowability of this application.

Respectfully submitted,

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By

A handwritten signature in black ink, appearing to read 'Donald R. Piper, Jr.', written over a horizontal line.

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